

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitioner: Lake County Trust #2662 c/o Shirley Jean Teitge Singel

Respondent: Department of Local Government Finance

Petition #s:	Parcel #s:	Lot #s:
45-001-02-1-5-00511	001013903000021	21
45-001-02-1-5-00512	001013903000025	25
45-001-02-1-5-00513	001013903000024	24
45-001-02-1-5-00514	001013903000026	26
45-001-02-1-5-00516	001013903000022	22 & 23

Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Department of Local Government Finance (the DLGF) determined the Petitioner's total property tax assessment for the subject properties to be \$76,200.
2. The Petitioner filed the Form 139L petitions on April 23, 2004.
3. The Board issued the notices of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 21, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject properties consist of 5 parcels located on W. 48th Avenue:
 - a) Parcel # 001013903000021 (Lot 21) is a single family residence used as a rental property located at 2275 W. 48th Avenue.
 - b) Parcel # 001013903000025 (Lot 25) is an unimproved vacant lot located at 2261 W. 48th Avenue.

- c) Parcel # 001013903000024 (Lot 24) is an unimproved vacant lot located at 2269 W. 48th Avenue.
- d) Parcel # 001013903000026 (Lot 26) is an unimproved vacant lot located at 2259 W. 48th Avenue.
- e) Parcel # 001013903000022 (Lots 22 & 23) contains a detached garage and is located at 2271 W. 48th Avenue

6. The Special Master did not conduct an on-site visit of the property.

7. Assessed Value of the subject properties as determined by the DLGF:

Parcel #	Land	Improvements	Total
001013903000021	\$5,900	\$42,900	\$48,800
001013903000025	\$3,900	\$ -0-	\$3,900
001013903000024	\$3,900	\$ -0-	\$3,900
001013903000026	\$3,900	\$ -0-	\$3,900
001013903000022	\$9,700	\$6,000	\$15,700

8. Assessed Value requested by Petitioner:

Parcel #	Land	Improvements	Total
001013903000021	\$1,300	\$16,900	\$18,200
001013903000025	\$1,200	\$ -0-	\$1,200
001013903000024	\$1,200	\$ -0-	\$1,200
001013903000026	\$1,300	\$ -0-	\$1,300
001013903000022	\$2,200	\$ -0-	\$2,200

9. Shirley J. Teitge Singel, representing the Petitioner, and Joseph Lukomski, Jr., with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:

- a) The Petitioner contends that the lots are low and swampy. There is no city water or sewer hookup. The back portions of the lots have water standing most of the time and the lots are too small to build on. *Singel testimony.*
- b) The house is on lot 21 which is the first lot on the east side. This rental property has suffered through the years. There is no central air, no city water, no city sewers, no alley, just a swamp area where the alley should be. There have been no improvements to the house and the neighborhood is declining. *Singel testimony.*

- c) The garage is on lots 22 and 23. The garage has holes in the roof, the doors do not operate, and the sides are deteriorating. The garage is in poor condition and should be torn down. *Singel testimony.*
- d) The lots were previously assessed at \$1,000 and now are assessed at \$3,900. Petitioner testified that she does not understand how the assessment can be so different than what you could get for the property. *Singel testimony.*
- e) Lots 25 and 26 were sold on July 8, 2004. The Petitioner received for \$2,200 for both lots. The Petitioner presented copies of the checks received for the sale. *Singel testimony; Petitioner Ex. 2.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented a listing of twenty comparable properties for the parcel with the house (lot 21). The first four listed are similar to the subject improvement in grade and other features. *Lukomski testimony; Resp't Ex. 5.* The square foot price of the subject property is \$44.69 and the average of the four comparable sales is \$50.98 which puts the subject property lower than the sales used in the neighborhood. *Lukomski testimony; Respondent Ex. 5.*
- b) The Respondent presented a plat map showing the subject properties. *Resp't Ex. 4.* The Respondent presented no comparable properties or any evidence related to the value of the vacant lots.
- c) Based on the photographs presented by the Petitioner, the Respondent agrees the garage, on lots 22 and 23, is not in good shape. *Lukomski testimony.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled BTR # 1296.
- c) Exhibits:

Petitioner Exhibit 1 - Evidence for Petition # 45-001-02-1-5-00511: Notice of Hearing; Form 139L; Valuation Record (Property Record Card) 2003; Valuation Record (PRC) 2005; Information Letter for Lot 21.

Petitioner Exhibit 2 - Evidence for Petition # 45-001-02-1-5-00512: Notice of Hearing; Form 139L; Valuation Record (PRC) 2003; Valuation Record (PRC) 2005; copies of checks received from sale of lots.

Petitioner Exhibit 3 - Evidence for Petition # 45-001-02-1-5-00513: Notice of Hearing; Form 139L; Valuation Record (PRC) 2003; Valuation Record (PRC) 2005.

Petitioner Exhibit 4 - Evidence for Petition # 45-001-02-1-5-00514: Notice of Hearing; Form 139L; Valuation Record (PRC) 1999; Valuation Record (PRC) 2005.

Petitioner Exhibit 5 - Evidence for Petition # 45-001-02-1-5-00516: Notice of Hearing; Form 139L; Valuation Record (PRC) 2003; Valuation Record (PRC) 2005; Valuation Record (PRC) 2005; Pictures; Information Letter for Lots 22 & 23.

Respondent Exhibit 1 - Evidence for Petition # 45-001-02-1-5-00511: Subject PRC Subject Photo; Plat Map; Comps/PRCs/Photos.

Respondent Exhibit 2 - Evidence for Petition # 45-001-02-1-5-00512: Subject PRC.

Respondent Exhibit 3 - Evidence for Petition # 45-001-02-1-5-00513: Subject PRC.

Respondent Exhibit 4 - Evidence for Petition # 45-001-02-1-5-00516: Subject PRC.

Board Exhibit A - Form 139L petitions

Board Exhibit B - Notices of Hearing

Board Exhibit C - Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioner failed to raise a prima facie case that lots 21, 22, 23 and 24 were over-valued or that the house was assessed incorrectly. However, Petitioner raised a prima facie case that lots 25 and 26 were over-valued. Further, based on the agreement of the parties, the garage structure on lots 22 and 23 should be rated as in “very poor” condition. This conclusion was arrived at because:
- a) The Petitioner contends that the assessments of the subject properties are excessive. According to Petitioner, the lots are swampy, the house has not been improved, and the garage should be torn down.
 - b) The Petitioner testified that the lots are swampy, too small to build on and not worth the amount for which they have been assessed. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). Petitioner has not provided evidence that an incorrect land value was applied to the subject properties or that her properties were assessed differently than other properties within her neighborhood.
 - c) However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The PRC shows that a 20% negative adjustment factor was applied to the properties to reflect the unimproved nature of the lots. While the Petitioner testified that the properties are too small to build on, no evidence of building codes or restrictions were submitted by the Petitioner. Further, while the lots may be too small to build on individually, Petitioner owns multiple parcels that provide sufficient space for development. Finally, while the “swampy” nature of the lots may be relevant to the issue of whether a different negative influence factor should apply here, Petitioner failed to show how this condition would impact the market value-in-use of the subject property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108.
 - d) The Petitioner also submits her 1995 assessments as evidence of the properties’ value. The Petitioner is mistaken in her reliance on the valuation on the 2003 property record cards. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id*

- e) The Petitioner, however, sold two parcels (25 and 26) for \$2200 together in 2004. The sale of a subject property is often the most compelling evidence of its market value. In this case, the Petitioner sold the subject properties for less than one-third the amount for which it is currently assessed. The sale price therefore demonstrates that the current assessment is excessive. While the 2002 general reassessment requires real estate to be valued as of January 1, 1999. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2), the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date on which the Petitioner sold the properties. In any event, the subject properties would have had to depreciate at an astronomical rate in order for the current assessment to be a more accurate measurement of its true tax value than the purchase price. The Respondent presented no evidence to dispute this value. Thus the Board finds that parcels 25 and 26 should be valued at \$1,100 each.
- f) The Petitioner also contends that the house on lot 21 has not been improved and has no air conditioning, no city water, no sewer and no alley. *Singel testimony*. The Petitioner did not attempt to quantify the effect the lack of these improvements has on the market value-in-use of the home. The Petitioner's assertions amount to little more than conclusory statements. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890 (Ind. Tax 1995).
- g) Finally, Petitioner argues that the garage on lots 22 and 23 has a hole in its roof, the garage doors do not open and the structure is sagging and should be torn down. The Petitioner submitted photographs showing the hole in the roof, the sagging structure and the weeds grown up over the non-working garage doors. Respondent agreed that the garage was in bad shape. The Real Property Guidelines state that yard improvements in "poor" condition require "many repairs." GUIDELINES, Chap. 5, pg. 8. "The structure suffers from extensive deferred maintenance" and "major inutilities in that it lacks several amenities that the majority of structures of its design offer." *Id.* However, a structure in "poor" condition is still being put to some use. *Id.* A "very poor" structure needs "extensive repairs." *Id.* It "suffers from extensive deferred maintenance and is near the end of its physical life." According to the Guidelines, a "very poor" structure "suffers from extensive inutilities in that it lacks most amenities that the majority of structures of its age and design offer." *Id.* Based on the agreement of the parties and the evidence presented, the Board finds that the garage should be rated as in "very poor" condition.

Conclusion

15. The Petitioner failed to raise a prima facie case that lots 21, 22, 23 and 24 were over-valued or that the house was assessed incorrectly. However, Petitioner raised a prima facie case that lots 25 and 26 were over-valued. Further, based on the agreement of the parties, the garage structure on lots 22 and 23 should be rated as in "very poor" condition.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>